IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 856 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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PIYUSHBHAI BHUPENDRABHAI TRALSAWALA & 1 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR KJ SHETHNA for Appellant(s) : 1 - 2.
MS AJ DESAI, LD.APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 26/03/2007

ORAL JUDGMENT

1. The present appeal is preferred by the appellants-orig.accused (hereinafter referred to as 'the appellants') against the judgment and order of conviction and sentence dated 03rd September 1997, passed by learned Additional Sessions Judge, Bharuch in Special Atrocity

Case No.25 of 1997, whereby they have been held guilty for the offence punishable under Sections 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act, 1989 (hereinafter referred to as 'the Act'). The appellants have assailed the legality and validity of the judgment and order of conviction and sentence under challenge on various grounds as mentioned in paragraph no.9 of the memo of the appeal.

2. I have heard Shri K.J. Shethna, learned senior advocate appearing for the appellants and Shri A.J. Desai, learned Additional Public Prosecutor, appearing on behalf of the respondent-State. Both of them have taken me through the oral as well as documentary evidence led during the course of trial. The appellants were charged for the offence punishable under Sections 504, 506(2) read with Section 114 of the Indian Penal Code. Both of the appellants have been acquitted by the learned trial Judge for these two offences

punishable under the Indian Penal Code. However, the Court found that both the appellants have committed offence punishable under the Atrocities Act.

3. To appreciate the rival contentions raised by both the sides, it would be beneficial to state the case of the prosecution in brief. The complainant is serving with the ONGC. He and his wife are residing in one scheme known as “Unnatinagar” in one of the blocks which is constructed by Gujarat Housing Board. The appellants are the neighbours of the complainant and PW-2-wife of the complainant Sushmaben, on Monday prior to the date of filing of the complaint had plucked off a flower of rose from the plant of the appellants lying in the premises of the appellants i.e. from 'Vada' (land adjoining to the plot owned by the owner) and, therefore, there was some hot exchange of words between the appellant no.2 and PW-Sushmaben. The complainant-husband of PW-2 Sushmaben, was

serving at Mumbai and as per the settlement of his duties, he used to come to his home every fortnight from Mumbai. This time he returned on Thursday and he was informed by his wife PW-2 Sushmaben about the incident that had occurred on Monday. So on the next day morning i.e. on 30th August, 1996 at about 08-00 a.m., the appellants saw complainant and his wife in their house and on seeing the complainant, the appellant no.1 and his wife appellant no.2 started abusing the complainant and his wife, and addressed them as “Dheda”, meaning thereby, a member of the low-caste. In Gujarat State, 'Dheda' is a community included in the Schedule of low-castes. The appellant no.2 had said that “at night 'Dhedi' had gone to her house after passing through my Vada. I will not tolerate that low-castes people pass through my Vada”. The complainant in turn asked the appellants about not to insult them. But in response thereof, the complainant was told that they are “Dheda” by community and the appellants shall address them as a member

of low-caste and the complainant may do whatever he can. When the exchange of words was going on, PW-Devilaben-paternal aunt of the complainant was present there. She has been cited as a witness by the complainant. It is also alleged that the appellants had told the complainant and his wife that “you-the members of the low-caste have turned violent and have gone out of control and their neighbourhood gives ill-effect on their positive culture and they do not like that low-caste people reside in their vicinity”. The appellants had also threatened and asked them not to go to the Police Station and to lodge the complaint, otherwise they may be done to death. On listening the threat, the complainant had felt apprehension but as the paternal aunt of the complainant i.e. PW-Devilaben had been to the house of the complainant to take them as they were to attend one socio-religious ceremony of new residential premises of son of the said PW-Devilaben, all the three had left for the

house-warming ceremony.

4. On 30th August 1996, after attending the function at the residence of son of PW-Devilaben, the complainant submitted a written complaint to the Police Inspector, Bharuch Police Station. The learned trial Judge after evaluating the evidence held the appellants guilty of the charge punishable under Section 3(1)(10) of the Act. Shri K.J. Shethna, learned counsel appearing for the appellants, while placing the case of the appellants, has submitted that the findings arrived at by the learned trial Judge are erroneous and illegal as the same are based on improper and illegal appreciation of evidence. It is argued that when the learned trial Judge has acquitted both the appellants from the charge of offence punishable under Sections 504 and 506(2) of the Indian Penal Code, they could not have been held guilty for the offence punishable under Section 3(1)(10) of the Act because the

prosecution has failed to prove the ingredients of the story placed before the Court and when the Court has found that main part of the story has not been proved satisfactorily, the appellants could not have been linked with the crime. It is also argued that independent evidence of neighbours could have been led by the prosecution as it is in evidence that about 25 persons had gathered. Only one witness i.e. PW-4 Madhuben (Ex.12) has been examined, however, she has not supported the case of the prosecution. The contradictions proved through Police Sub-Inspector D.B. Rajput qua the version of PW-Madhuben cannot be read as substantive piece of evidence, otherwise the contradictions proved qua PW-2 Sushmaben would go the root of the case of the prosecution. It is also argued that this is a case of delayed and planned FIR and it appears to have been filed in consultation with a lawyer i.e. a planned false complaint has been lodged. Even it is established beyond reasonable doubt by two

defence witnesses namely DW-2 and DW-3 that the appellant no.1 was not there at his residence after 09-00 a.m. He is serving in Gujarat Electricity Board and he is a helper as stated in his deposition. That he himself marks the presence of helpers under him and on 30th August, 1996, the appellant no.1 was on duty as a helper. The appellant no.1 was in general shift and it is stated by this witness that if any helper comes after 08-15 a.m., his absent is marked. He has produced the documentary evidence i.e. Register to show that the appellant no.1 was present on duty on 30th August, 1996. The learned trial Judge has ignored this evidence. The learned trial Judge at least ought to have appreciated the evidence of said two Defence Witnesses before accepting the version of the complainant and his wife. The case of the prosecution rests with the evidence of only two witnesses i.e. complainant and his wife. The other witnesses who have supported the case of the prosecution are independent witnesses and their evidence

is formal in nature and it has come on record that both panchas are selected panchas and one of the panch witnesses has admitted that he has signed the panchnama at the instance of the complainant and he is also a member of the Scheduled Caste. The learned trial Judge has also ignored that the complainant and his wife both were invited at the residence of the appellants in a religious ceremony along with other neighbours and family friends when “Gayatri Yagnya” was organized which was followed by lunch as 'prasad'. So this is not a case wherein the appellants could have been linked with any offence punishable under the provisions of the Act. According to Shri K.J. Shethna, learned counsel appearing for the appellants, the ratio of the decision reported in 1997 (2) GLH 327 and AIR 2007 SC 155, would help the appellants.

5. On the other hand, Shri A.J. Desai, learned Additional Public Prosecutor, has submitted that the appeal should be dismissed because

the Court can hold the appellants guilty on the sole testimony of any one witness. Material contradictions are found in the depositions of PW-2 Sushmaben, but no such contradictions are found in the deposition of the complainant. The complainant was all throughout present during the incident on 30th August 1996, and this is not a case of gross delay in filing the complaint. He has explained the cause of delay though the paternal aunt has not supported the case of the prosecution, but she has proved the incident and she has stated that the complainant and his wife were being abused when she went to the house of the complainant to fetch them for the socio-religious ceremony arranged at the new residential house of her son. It was a house-warming function popularly known as “Vastu Poojan”. There was no reason for the complainant to falsely implicate the the appellants. The defence placed by the appellants about some dispute as to the right of way is neither convincing nor acceptable.

The appellant no.1 is a responsible citizen being a person serving in a public sector department i.e. Gujarat Electricity Board, and he ought not to have abused the complainant or his wife. Of course, PW-Sushmaben, prior to her marriage, was Muslim and on account of her marriage with the complainant, she had converted herself into Hindu religion and had adopted the name Sushma. But this would not go to the root of the conviction because the complainant and his wife both were insulted and appellant no.2 had abused PW-2 Sushmaben saying that she has entered the house and family of a low-caste.

6. Having considered the totality emerging from record and the points developed by Shri Shethna during his oral submission, the Court is of the view that the finding recorded by the learned trial Judge holding the appellants guilty is not sustainable and it is rightly submitted that the same is based on gross error and erroneous appreciation of evidence.

The accepted settled principle of criminal jurisprudence has been ignored by the learned trial Judge while linking the appellants with the crime. It appears that the finding recorded by the learned trial Judge is required to be reversed mainly for the following reasons :

(i) This is a case of delayed FIR and there is no reasonable plausible explanation for the delayed FIR. When the incident has occurred in Bharuch City itself, the complaint could have been lodged in couple of minutes and the complainant ought not to have waited for completion of the house-warming ceremony of his cousin brother. On careful reading of the FIR, it is clear that the complaint is drafted after certain deliberations and, therefore, it was not safe for the Court to use any part of the complaint as corroborative piece of evidence.

(ii) The PW-2 Sushmaben-wife of the complainant has stated that the incident of plucking of rose flower had occurred on previous day i.e. on 29th August 1996 and on the next day i.e. on 30th August 1996, they were insulted and ill-treated by the appellants. This version which has come during the course of cross-examination of PW-2 contradicts the story placed by the complainant wherein he has stated that the incident of plucking off the rose flower had occurred on Monday and Thursday he had come from Mumbai during night hours and he was told by his wife about the incident of Monday.

(iii) The story of plucking off the rose flower is under a great shadow of doubt. It has emerged from the evidence that there was some dispute between the complainant and the appellants as to the use of some piece of 'Vada' land by the

complainant and his family which belongs to the appellants; and the family of the appellants was objecting as to use of the same by the complainant and his family. The complainant was in need of small piece of land admeasuring 2 ft. width or so, so that he can have more access on another side of his house. But the appellants and their family members were not ready to part with the said portion which was there under the ownership of appellants. So there was a genuine dispute and inimical feeling between the families of complainant and appellants.

(iv) So far as exchange of abuses and the words uttered with a view to insult the complainant and his wife, which are found in the draft complaint, are concerned, the same does not get support or corroboration from PW-Devilaben-paternal aunt of the complainant. The

version of the complainant is found exaggerated. If he was really telling truth at the time of dictating complaint to his lawyer, at least he could have got ample support from his wife Sushmaben. On the contrary, it has emerged from the evidence of PW-2 Sushmaben that in her initial version before Police i.e. in her statement recorded by Police Inspector Shri Rajput, she had not stated anything which can be said to be corroborative piece of evidence to the complainant. Three material contradictions were brought to her notice and they have been proved during the deposition of Police Sub-Inspector Shri D.B. Rajput. These three contradictions are as to the use of language by the appellants while insulting the complainant and his wife. So the evidence of PW-2 was not useful either to the prosecution or to the complainant. It was not legally possible

for the learned trial Judge to use the evidence of PW-2 as corroborative piece of evidence. The case of the prosecution if is based on one integrated story, then that integrated story is required to be proved. Here no legal evidence has been led to prove the charge of offence punishable under Section 504 of the Indian Penal Code. In the same way, no criminal intimidation defined under Section 503 of the Indian Penal Code has also been found proved. When two substantive charges of the offence punishable under Sections 504 and 506(2) of the Indian Penal Code are not found proved, the appellants could have been given benefit of doubt. Pw-1 and PW-2 ought not have been believed for the offence punishable under the provisions of the Atrocity Act.

(v) The appellants have not taken the plea of alibi in stricto sensu. The appellant

no.1 has attempted to prove that the prosecution witnesses have falsely implicated him even though he was not present at his residence. The appellant no.1 simply could have produced the copy of the register from the department. However, he has tried to bring maximum possible evidence to falsify the evidence led by the complainant about his presence and role played on 30th August, 1996 between 8-00 a.m. and 09-00 a.m.

(vi) The investigation has not remained transparent. The independent witnesses whose names have emerged on record, were required to be examined. It appears that Unnatinagar being scheme of Gujarat Housing Board, people from various castes, communities and religions were occupying their respective small residence and some of them may not have any interest in the affairs of both the

families i.e. complainant and the appellants. They could have been examined in the present case, and therefore, the prosecution can be said to have failed in procuring and leading independent evidence.

(vii) DW-1, who also belongs to Scheduled Caste being a member of Mochi community, has proved that the appellants had invited number of people to attend religious ceremony arranged by them and the complainant and his family were also invited and they had participated. The learned trial Judge has committed grave error in ignoring this relevant aspect.

(viii) The appellants are supposed to point out probable defence and they have pointed out the probable defence i.e. existing dispute as to the use of some parcel of land as way, owned and occupied by the appellants.

7. It is not necessary to reproduce the oral version of the complainant or PW-2 Sushmaben in light of the aforesaid reasons. It would be sufficient to observe that the finding of conviction is erroneous and in such a fact situation, the appellants could not have been held guilty, especially when they have been acquitted from two major charges punishable under Sections 504 and 506(2) of the Indian Penal Code and hence, the present appeal is required to be allowed.

8. In view of aforesaid observations, discussion and reasons, the present appeal is hereby allowed. The judgment and order of conviction and sentence dated 03rd September, 1997, passed by the learned Additional Sessions Judge, Bharuch, in Special (Atrocity) Case No.25 of 1997, is hereby quashed and set aside. The appellants-orig.accused are hereby ordered to be acquitted from all the charges levelled against them in respect of the offence in question. The bail bond executed by

the appellants shall stand discharged. The amount of fine, if any paid, be refunded to the appellants on proper identification.

(C.K. Buch, J)

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